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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,547	03/02/2001	Roger De Lathouwer	COL202	3745

7590 09/04/2002  
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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

**Office Action Summary**

Application No.

09/786,547

Applicant(s)

DE LATHOUWER, ROGER

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_                      6) ☐ Other:

### **DETAILED ACTION**

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the nesting of five suitcases must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the edges of the upper and lower surface parts, the front and rear faces have no antecedent basis in the specification.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 26-33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not support the front face with the adjoining edge with the upper surface part as set forth in claim 26. Furthermore, the original disclosure does not support the rear face with the adjoining edge with the lower surface part.

Art Unit: 3727

This is a new matter rejection. Furthermore, the “tough material” also renders the claim indefinite, i.e., the original disclosure claims do not define what constitute “tough material”

5. Claims 15-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims remain replete with indefinite errors:

The recitation “without rigid frame” renders the claim indefinite. It is unclear what is excluded from this recitation. The claim recites “without rigid frame”; however, the claim and the specification include a plurality of parts that made up the rigid frame, e.g., portions 2, 12, and 3.

The terms “faces”, “the rigidification”, “the rods”, “the upper”, and “the lateral faces” have no antecedent basis.

The term “aforesaid” should be changed to “said”.

Regarding claim 25, “vertical suitcases” has no antecedent basis.

Regarding claim 26, line 19, “the third face” has no antecedent basis

The structural relationship between the upper and lower surface parts and the front and back faces is confusing, e.g. it is unclear what is the four edges of the rear face; the drawings do not show a bottom edge of the rear face. Applicant is required to show the corresponding edges of these elements in the drawings.

Claim 26 is confusing, the recitation “the third face...the third edge of the rear face; a pair” is inconsistent, i.e., the third face of the lower surface part joined to the third edge of the rear face. The claim later recites the first edge of the upper surface part is joined by the third

Art Unit: 3727

edge of the rear face. It seems that the third edge of the rear face connected to **both** the third face of the lower surface part and the first edge of the upper surface part.

In claim 29, it is unclear what element constitutes the central part as set forth.

In claim 30, "the lower part" has no antecedent basis. Does applicant mean --the lower surface part--. The claim is also confusing with respect to the introduction of "curved form".

Regarding claim 33, "outer side of curved ends of the pair of tubes" has no antecedent basis.

*Claim Rejections - 35 USC § 102*

6. Claims 15, 16, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Himbeeck. Van Himbeeck teaches a suitcase having two tubes at portions 128 and 160, an opening, and a molded portion having two curved plates 32 and 34. Van Himbeeck teaches retaining rings 166 as shown in Fig. 11.

With respect to the limitation "without rigid frame", as best understood, the frame in Van Himbeeck does not have a "rigid frame" on the inside of the luggage, and walls 51, 42, 36.

Regarding claim 21, at least the edge of the front portion is not supported by the upper portion of the suitcase as claimed.

7. Claims 15, 16, 18, 20, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of either Kish, Jr. or Kotkins. Lin teaches a suitcase having two tubes at portions 72 and 74, an opening, and a molded portion having two curved plates 20 and 22. Lin meets all claimed limitations except for the retaining elastic rings. Either Kish, Jr. or Kotkins teaches that it is known in the art to provide retaining elastic rings 92 and 35

Art Unit: 3727

respectively. It would have been obvious to one of ordinary skill in the art to provide retaining rings in Lin as taught by either Kish, Jr. or Kotkins to keep the panels together.

Regarding claims 24 and 25, Lin teaches the nesting one within the other (col. 3, lines 41-43). It would have been obvious to one of ordinary skill in the art to provide at least 5 suitcases in Lin to store additional contents.

8. Claims 15-18, 20, 21, 25-29, 31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers (DE19525571) in view of either Kish, Jr. or Kotkins. Myers teaches a suitcase having two tubes 108, an opening, and a molded portion having two curved plates 80'.

Myers meets all claimed limitations except for the retaining elastic rings. Either Kish, Jr. or

Kotkins teaches that it is known in the art to provide retaining elastic rings 92 and 35 ✓

respectively. It would have been obvious to one of ordinary skill in the art to provide retaining rings in Myers as taught by either Kish, Jr. or Kotkins to keep the panels together. Regarding claim 21, portions 98 and 72 are the upper and lower portions as claimed, and portion 98 does not support at least a front part of the upper face of the suitcase.

Regarding claim 31 it would have been obvious to one of ordinary skill in the art to make the two plates in Myers out of polyethylene sheet to manufacture the luggage easily.

9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Himbeeck in view of King. Van Himbeeck meets all claimed limitations except for the parts are attached by rivets. King teaches that it is known in the art to attach parts of a luggage by rivets. It would have been obvious to one of ordinary skill in the art to attach parts of a luggage by rivets in Van Himbeeck as taught by King to fasten the parts easily.

Art Unit: 3727

10. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Myers rejection as set forth in paragraph 8, and further in view of King. The Myers combinations meet all claimed limitations except for the parts are attached by rivets. King teaches that it is known in the art to attach parts of a luggage by rivets. It would have been obvious to one of ordinary skill in the art to attach parts of a luggage by rivets in the Myers combinations as taught by King to fasten the parts easily.

***Response to Arguments***

11. Applicant's arguments filed 12/05/01 have been fully considered but they are not persuasive.

With respect to the recitation “without rigid frame”, as set forth above, it is unclear what is excluded from this recitation. The claim recites “without rigid frame”; however, the claim and the specification include a plurality of parts that made up the rigid frame, e.g., portions 2, 12, and 3. In view of these comments, the limitation can be broadly interpreted: the luggage is without rigid frame in one of the sidewall.

With respect to the Van Himbeeck reference, applicant asserts that portions 128 are not the claimed tubes. It is noted that the term “tubes” is broad. The term “tube” does not impart any structure over the structures in Van Himbeeck. Furthermore, portions 128, along with the surface of portion 126 form a “tubular conduit”.

Furthermore, the claim requires “the lateral faces being hoped by a retaining elastic ring”. It is noted that only one ring is required. Portion 166 meets the definition of “a ring” embracing the edge of the support portion.

Art Unit: 3727

Regarding the Lin reference, it is noted that portion 12 and 14 are not the frame of the luggage. The term "frame" imparts the whole integral structure of the luggage. The Lin reference does teach a supple material, being the fabric outside of the luggage.

Regarding the Kotchins reference, applicant noted that the strip in Kotchins is used to bind different panels. It is submitted that the term "retaining" is broad. Clearly, "binding" can be interpreted as "retaining".

Regarding the Myers reference, as noted above, the term "frame" imparts the whole integral structure of the luggage. The Myers reference does teach a supple material, being the fabric outside of the luggage.

With respect to the new claims, as set forth above, the claims recite structures that are not supported by the original disclosure. The claims are rejected as set forth above.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.



Application/Control Number: 09/786,547

Art Unit: 3727

Page 8

Tri M. Mai  
Examiner  
Art Unit 3727

*T. Mai*

September 3, 2002